

89-714

No. _____

Supreme Court, U.S.

FILED

OCT 18 1989

JOSEPH F. SPANIOL, JR.
CLERK

**In The Supreme Court Of
The United States**

OCTOBER TERM

ROY G. POWELL and
DIXIE LEE POWELL, in Propria Persona

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI
ON PETITION FOR REVIEW FROM THE
NINTH CIRCUIT COURT OF APPEALS,
ARIZONA DISTRICT

Roy G. Powell,
Dixie Lee Powell,
P. O. Box 145,
Safford, Arizona 85548

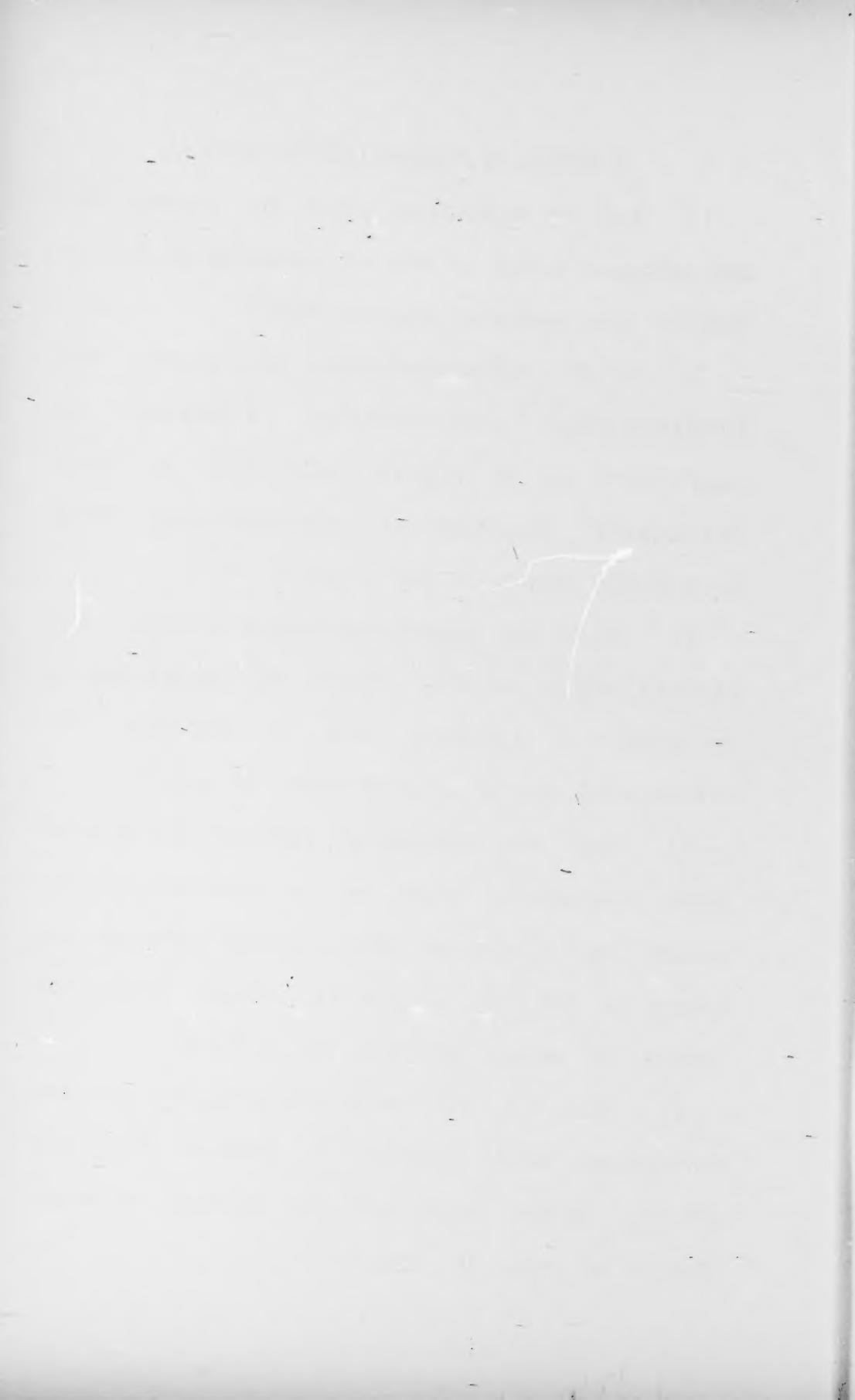
In Propria Persona

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QUESTIONS PRESENTED ON APPEAL

- 1) Are the defendants given due process fair and adequate notice in that no questions of fact or liability are presumed against them?
- 2) Is the indictment/statute procedurally and substantively unreasonable, arbitrary or capricious to a degree sufficient to deny defendants' fundamental constitutional Fifth Amendment rights to due process?
- 3) Does the indictment/statute provide due process right to fair notice by providing a standard of conduct, and a standard for enforcement and/or ascertainment of guilt?
- 4) Has the indictment violated defendants' Sixth Amendment Right to be informed of the Nature and Cause of the criminal charges for failure to file "an income tax return" when the "return" is neither specified nor defined?
- 5) Was the indictment unambiguous so that defendants could prepare a defense for one offense, rather than two or several offenses (double or triple jeopardy)?



6) Does the failure of the indictment to inform defendants specifically what is required to avoid criminal prosecution for a civil statute, and the taking of property without due process violate fundamental rights of the defendants under the Charter of The Organization of American States?



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In The
SUPREME COURT OF THE UNITED STATES
October Term 1989

ROY G. POWELL and
DIXIE LEE POWELL,

Petitioners,

- v s -

UNITED STATES OF AMERICA,

Respondent.

Petition for Writ of Certiorari
On Petition for Review from the Ninth Circuit
Court of Appeals, Arizona District

The Petitioners respectfully pray that a Writ of Certiorari issue to review the judgment of the Ninth Circuit Court of Appeals entered on August 17, 1989 dismissing Appeals No. 89-10202 and 89-10203, DC# CR 89-0085-ACM Ariz.



STATEMENT OF JURISDICTION

This petition is brought pursuant to the Constitution of the United States, Article III, Amendments I, V, VI, XIV, and 28 USC 1651; Article VI, making the U. S. Constitution and Treaties entered into by the United States the Supreme Law of the Land, the Treaty for the Organization of American States, Chapter III, Articles 5 and 13 providing for the rights of the individual, and the OAS, Human Rights American Convention, 1969.

The Petitioners have exhausted their available remedy with the dismissal of the Appeal on August 17, 1989 by the Ninth Circuit Court of Appeals after the Ninth Circuit dismissed Petitioner's Appeal from the Order of the District District Court for Failure to State a Cause of Action, Order dated April 10, 1989, and Appeal dismissed August 17, 1989. These decisions are final for review by this Court on a Writ of Certiorari, as well as Appeal to the OAS, due to the placing of jurisdiction of treaties over the U. S. Constitution.

CONSTITUTIONAL PROVISIONS

U. S. Constitution, Article III, Section 2:

"This Constitution, and the Laws of the United States which shall be made in pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

U. S. Constitution, Amendment I:

"Congress shall make no law . . . abridging . . . the right of the people . . . to petition the Government for a redress of grievances."

U. S. Constitution, Amendment IV:

"The right of the people to be secure in their persons, houses, papers, and effects, . . . shall not be violated, and no Warrants shall issue, but upon probable cause. . ."

U. S. Constitution, Amendment V:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentation of a Grand Jury, . . . nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law;



U. S. Constitution, Amendment VI:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining Witnesses in his favor, and to have the assistance of counsel for his defence."

U. S. Constitution, Amendment XIV:

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATUTES

Title 18 USC Section 3231

Title 26 USC Sections 6011, 6012, 6020(b),
7203, and 7343

Title 28 USC 1331, 1340, and 1651

Title 29 USC Section 530

TREATIES

OAS Treaty, 2 UST 2394, Chapter III, Articles 5 and 13. "Each state has the right to develop its cultural, political and economic life free and naturally. In this free development, the State shall respect the rights of the individual and the principles of universal morality."



STATEMENT OF THE CASE

On March 14, 1989 defendants Roy G. Powell and Dixie Lee Powell were handed a summons, charging them with violations of Section 7203 Title 26 by indictment of a Tucson, Arizona federal Grand Jury. (~~Attached Exhibit #1~~). Thereafter on March 28, 1989, the defendants challenged the indictment in a Motion to Dismiss for Failure to State a Cause of Action.

The indictment merely alleged that defendants had failed to file "an income tax return," without specifying which return or returns they were required to have filed.

Defendants were unable reasonably to determine indictively or deductively, or otherwise draw a conclusion which return or returns they had failed to file.

Without reason or opinion, the District Court denied defendants' Motion to Dismiss.

The accused made special appearances at Federal District Court on March 17, March 29, and

April 6, 1989. On April 6, the accused stated they were unable to understand the nature and cause of the action of charges, stated they were unable to plead, and objected to the Magistrate's making a plea for them.

The indictment fails to specify the level or degree of charges. A Court appointed public defender on March 17 informed defendants the charge is a felony, and the Clerk of the Court has marked the box for "Felony" on the Minute Entry sheet. The Court Record on Offense level shows: MIS, and 26 USC classified the charge as a misdemeanor.

Defendants/Appellants Roy G. Powell and Dixie Lee Powell appeal from the Order, dated April 10, 1989 of the United States District Court for the District of Arizona. Notice of Appeal was filed April 19, 1989, and was docketed as 89-10203, with Appeal brief due by July 19, 1989 whereupon the District Court vacated the trial date and motions hearing April 26, 1989 until the

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$\hat{f} = f^T$

Therefore $\hat{f} = f^T - f^T$

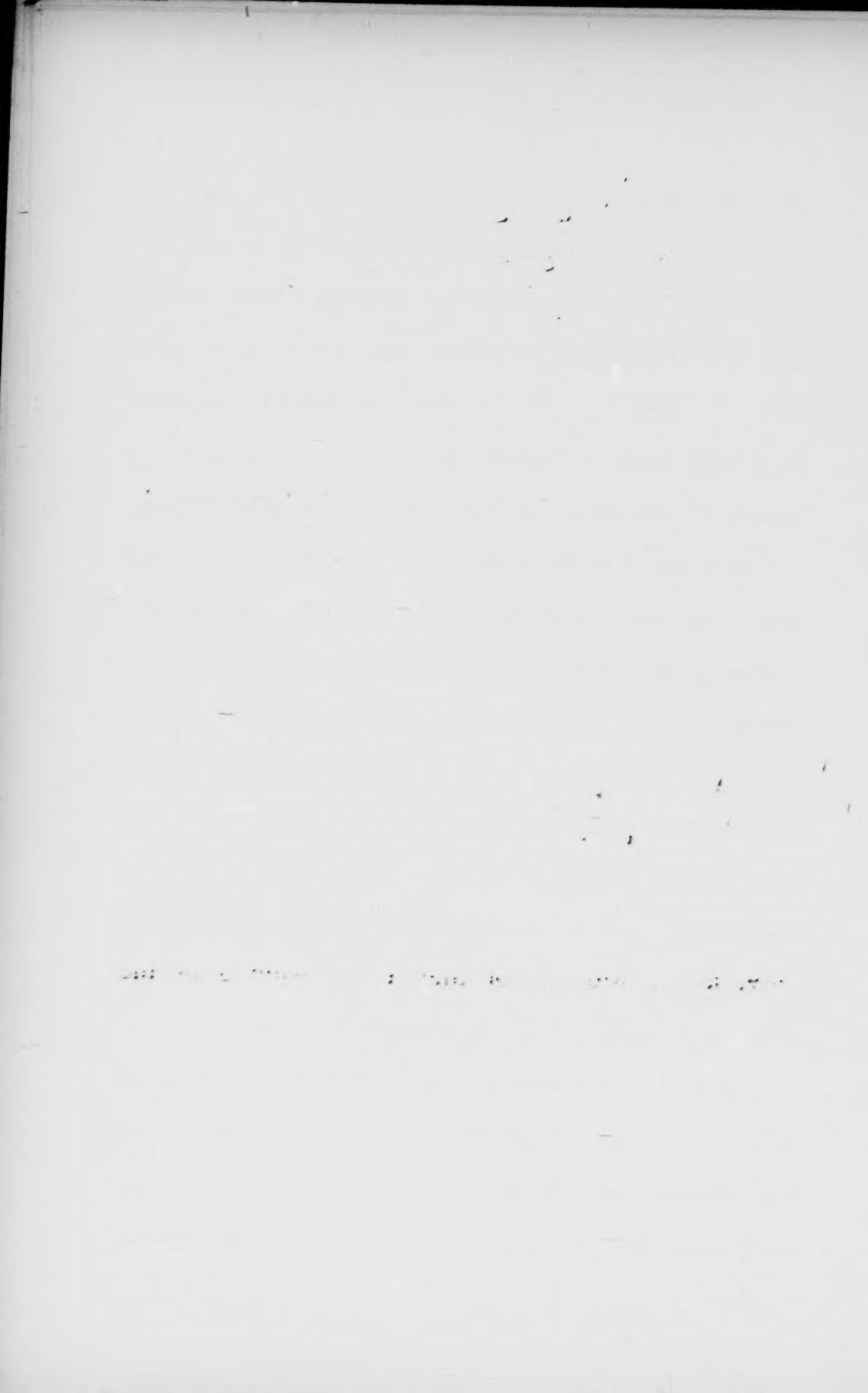
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final mandate.

The U. S. Assistant Attorney moved to dismiss for lack of jurisdiction of the Appeals Court, dated May 15, 1989, and the Order was given to dismiss June 5, 1989. Defendants/Appellants appealed the Order with a Notice dated June 12, 1989 and request for Hearing En Banc of the Appeals Court.

Petitioners will suffer irreparable harm and injury to their substantive rights if this matter proceeds to trial without notice of the specific charge. The acts charged will not, if proved, support a conviction for the offense charged. The return or returns required to be filed have not been clearly or specifically stated, such that a reasonable man could determine directly or deductively from the whole of the indictment what was intended to be charged.

Further, petitioners will suffer irreparable injury to other substantive rights by failure of the indictment to give notice of the charge. Petitioners will be deprived of the right to appear



and defend, to cross-examine witnesses, the right against double jeopardy, and right to an impartial jury. It is a violation of due process to convict an accused on a charge that was never made. *Cole v. Arkansas*, 92 L.Ed.644.

The government has had adequate notice that the indictment is defective, and has failed to remedy the defect in a timely manner. The government comes to court violating petitioners' rights.

WHEREFORE, petitioners pray that these proceedings and further prosecution by the government be stayed pending a final determination upon appeal of the decision to the United States Supreme Court. The Appeal was filed in an original action in the Court of Appeals April 19, 1989, and a Motion for Stay under Rule 8 of the Rules of the U. S. Supreme Court directed first to the District Court is not practicable.

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MEMORANDA OF POINTS AND AUTHORITIES

1) Questions of Fact or Liability Presumed. The Internal Revenue Service presumed defendants were given adequate notice which and how many of the 290 possible Internal Revenue forms defendants are "required" to "return" to "the District Director or other proper officer stating specifically which items of gross income and which deductions and credits" the Internal Revenue would accept.

See Black's Law Dictionary, Fifth Edition, p. 449: "If any question of fact or liability be conclusively presumed against him, this is not due process of law."

The Internal Revenue Service also presumed defendants were "taxpayers" subject to the tax, or were corporate persons under Section 7343, had revenue taxable activities, hence "income," and were made liable under Sections 6011 and 6012 of USC 26.

Most of the allegations of the indictment were

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presumptions, and the defendants had no notice of any obligation, since no assessment was made.

"No principle of procedural due process is more clearly established than that Notice of the specific charge . . . (is) among the Constitutional rights of every accused in a criminal proceeding in all courts, state or federal." Cole v. Arkansas 92 L.Ed 644, 333 U.S. 201.

2) Procedurally and substantively unreasonable, arbitrary or capricious. "No principle of procedural due process is more clearly established than that Notice of the specific charge . . ." See Cole v. Arkansas, 92 L.Ed 644, 333 U.S. 201, as cited above.

The statute is "unreasonable" because it does not define "income" nor state with particularity and specificity who is required to file and how a person is "made liable" for the tax, and what returns or forms and circumstances under which they are mandatory.

The statute is "arbitrary" because under

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Section 6020(b) the Secretary is empowered to make a return and assess the tax due. It is an arbitrary alternative to pursue civil or even criminal action rather than collecting the tax due through administrative or civil means.

The statute is "capricious" because any Internal Revenue Service agent can decide to accept or reject any "return" and thereafter pursue any means selected to harass the individual instead of pursuing the collection of the tax due. Criminal prosecution does not collect any tax due.

See Black's p. 449; "Due process of law" as it is embodied in the Fifth Amendment demands that a law shall not be unreasonable, arbitrary, or capricious and that the means selected shall have a reasonable and substantial relation to the object being sought.

3) Due Process Fair Notice. A "state must give its citizens fair notice of potentially criminal conduct. This requirement has two components: 'due process' requires a statute to be definite

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enough to provide (1) a standard of conduct for those whose activities are proscribed and (2) a standard for police enforcement and for ascertainment of guilt." Walker v. Superior Court (People) 763 P.2d 852 (Cal. 1988)

There is no standard of conduct for income tax returns, and any or all forms filed may be arbitrarily declared to be "no returns" or "invalid returns." There is no standard for enforcement either, as it is a "computer lottery" where one in 5,000 may be selected for legal action with total discretion or discrimination available to agents of the Internal Revenue Service.

Under the Civil Statutes, (Title 26) the Internal Revenue Service rightly has complete discretion to institute civil action, but criminal prosecution requires a standard of compliance, and every violation must be prosecuted.

In holding that a California statute requiring "credible and reliable" identification to police on demand was unconstitutionally vague, the

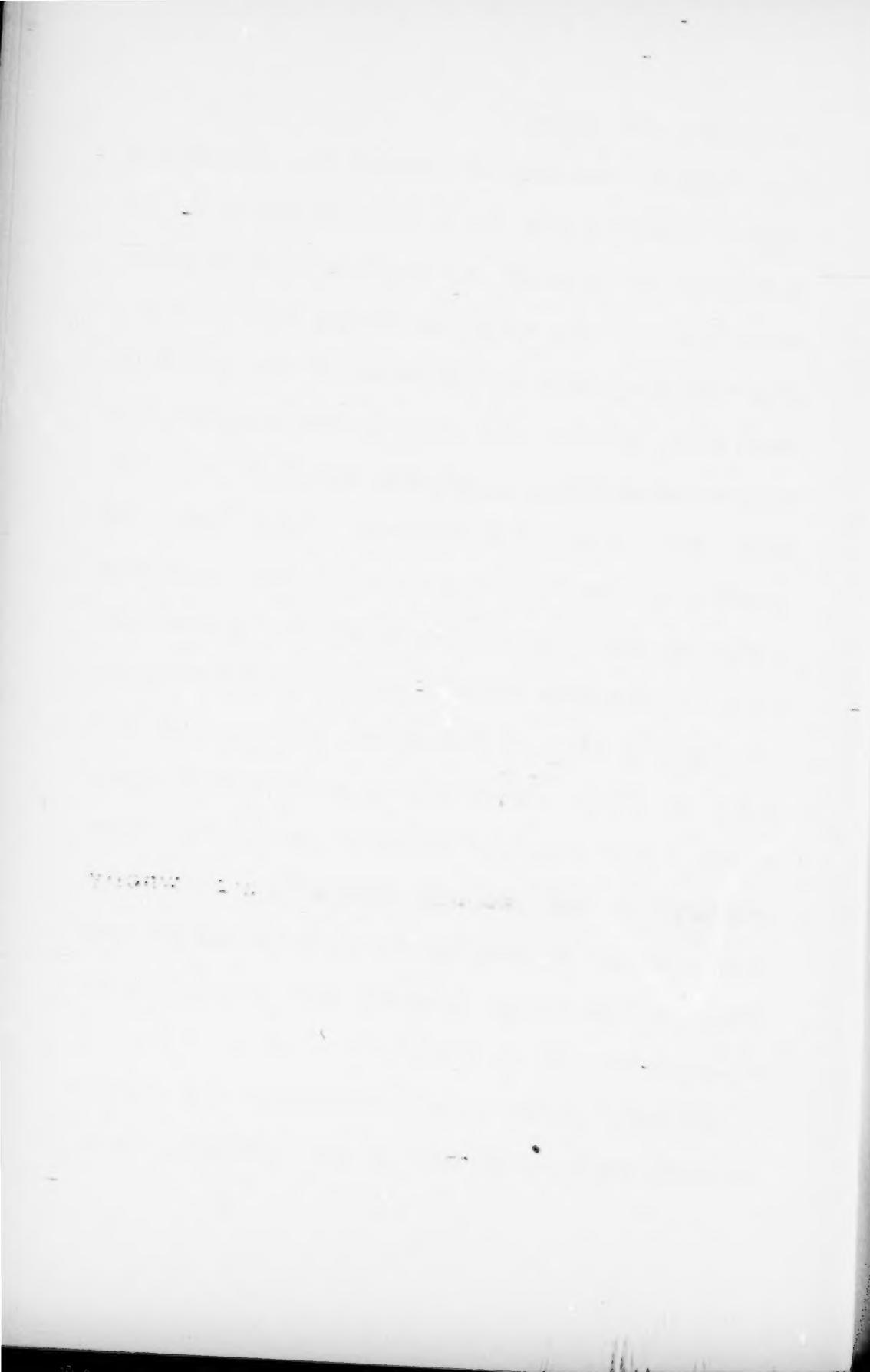
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Supreme Court stated:

[the statute] "contains no standard for determining what a suspect has to do in order to satisfy the requirement to provide a "credible and reliable" identification. As such, the statute vests virtually complete discretion in the hands of the police to determine whether the suspect has satisfied the statute. Kolender v. Lawson, 461 U.S. 352, 103 S.Ct. 1855. The [U.S. Supreme] Court based its holding on the fact that the statute's vagueness presented the potential for arbitrarily suppressing First Amendment liberties as well as infringing the right to free of movement. ID. at 358, 103 S.Ct. at 1859. Also that a penal statute must: define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement. Id. at 1855."

Ordinary people cannot understand the income tax form and how to fill it out correctly, and



arbitrary and discriminatory enforcement is the rule with the Internal Revenue Service.

Title 26, Section 7203 contains no standard for either "an income tax return," or for its twin "failure to keep records" which bears the same penalty as "failure to file." There are no records of prosecution for "failure to keep records" because it is obviously unconstitutionally vague. First Amendment rights are violated as well as Fifth Amendment rights in these instances.

We submit that the income tax under Title 26 was written for voluntary compliance, except for corporations and juristic persons, so while the requirement to keep records and file returns under civil proceedings of voluntary compliance could be deemed to be adequate, they are wholly inadequate for compelled performance under criminal prosecution.

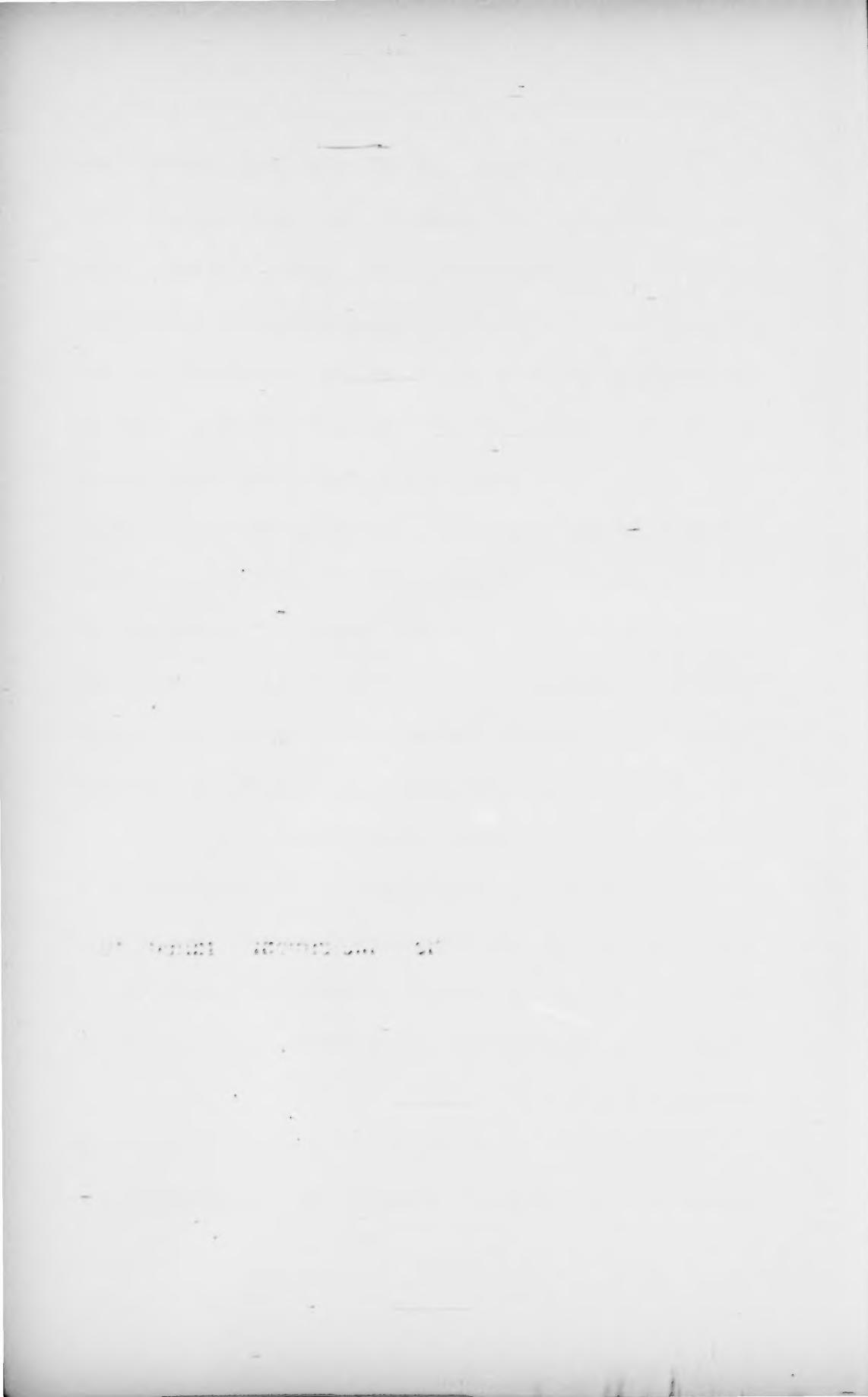
4) It is a Sixth Amendment violation to fail to inform one of the Nature and Cause of the "failure to file" charges.



"A crime is made up of acts and intent, and these must be set forth in the indictment, with reasonable particularity of time, place, and circumstance." U. S. v. Cruikshank 23 L.Ed 593. Defendants have a right to be informed of the nature and cause of the specific charges, and in this case, they must have specified the actual conduct or circumstances, or thing or means used. See Plotner v. State, 762 P.2d 936: "Valid information must include essential elements of offense charged, sufficient descriptions of elements to inform defendant of nature and cause of charge, and adequate description to permit later defense of former jeopardy.

"Information or indictment is insufficient if it does not allege all essential elements of offense charged; if an essential element is omitted, it cannot be supplied by intendment, implication or liberal construction. - Id.

"Information which fails to allege all essential elements of offense charged is incapable of



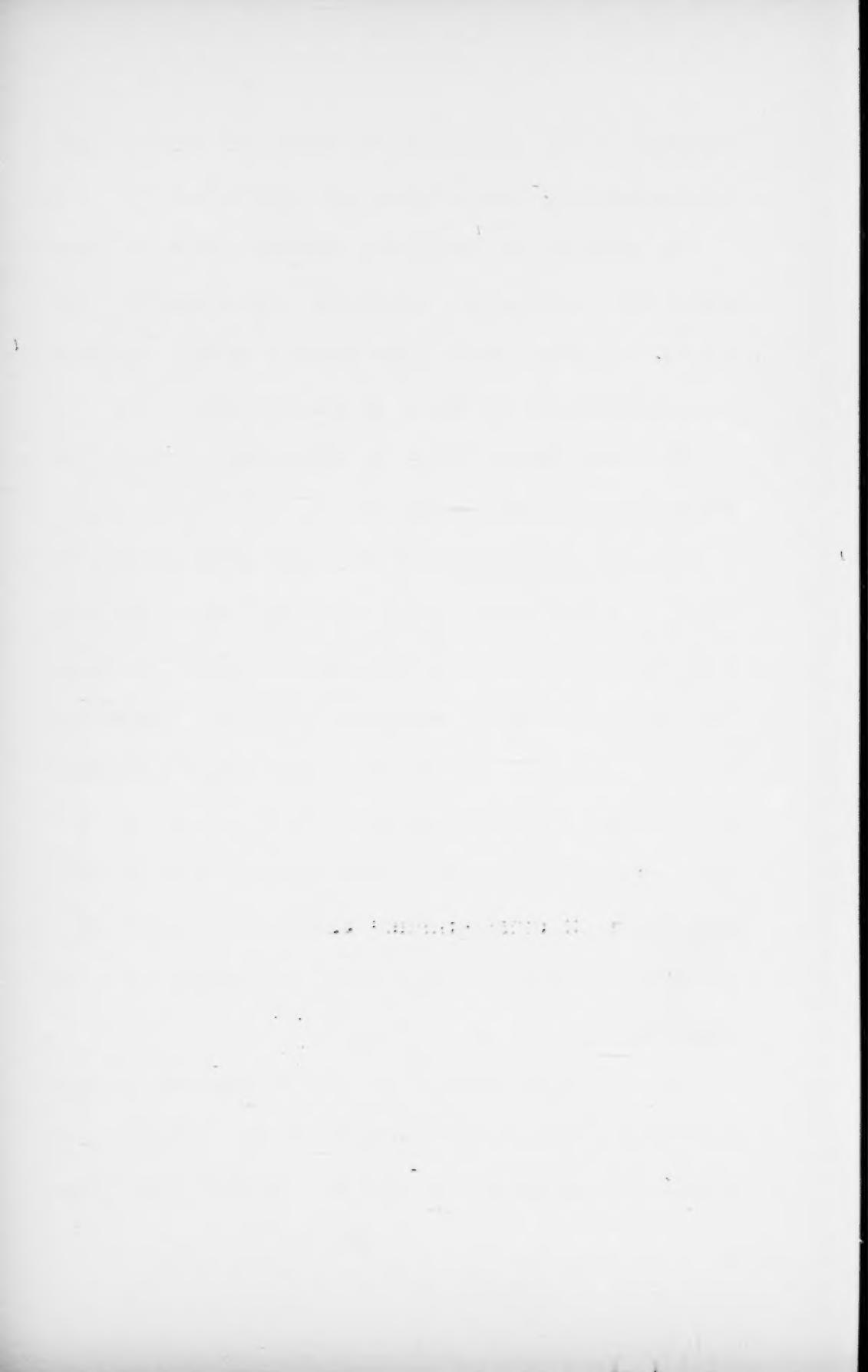
charging crime and so fatally defective that it cannot confer jurisdiction upon the trial court. Id.

"In addition to describing alleged crime in bare statutory language, charging information for certain offenses must also specify actual conduct or circumstances, or thing or means used." Id.

The indictment fails to describe, specify, or define "income tax return."

In U.S. v. Agone 302 F. Supp 1258 (S.D.N.Y. 1969) an indictment under 29 USC Sec. 530 was held to be insufficient because it failed to name the particular union member allegedly subjected to force, violence, and threats. The Court held that the identity of the union member went to the very core of criminality. The subject case is very like Agone, in that the indictment failed to describe the return and inform defendants if it is required.

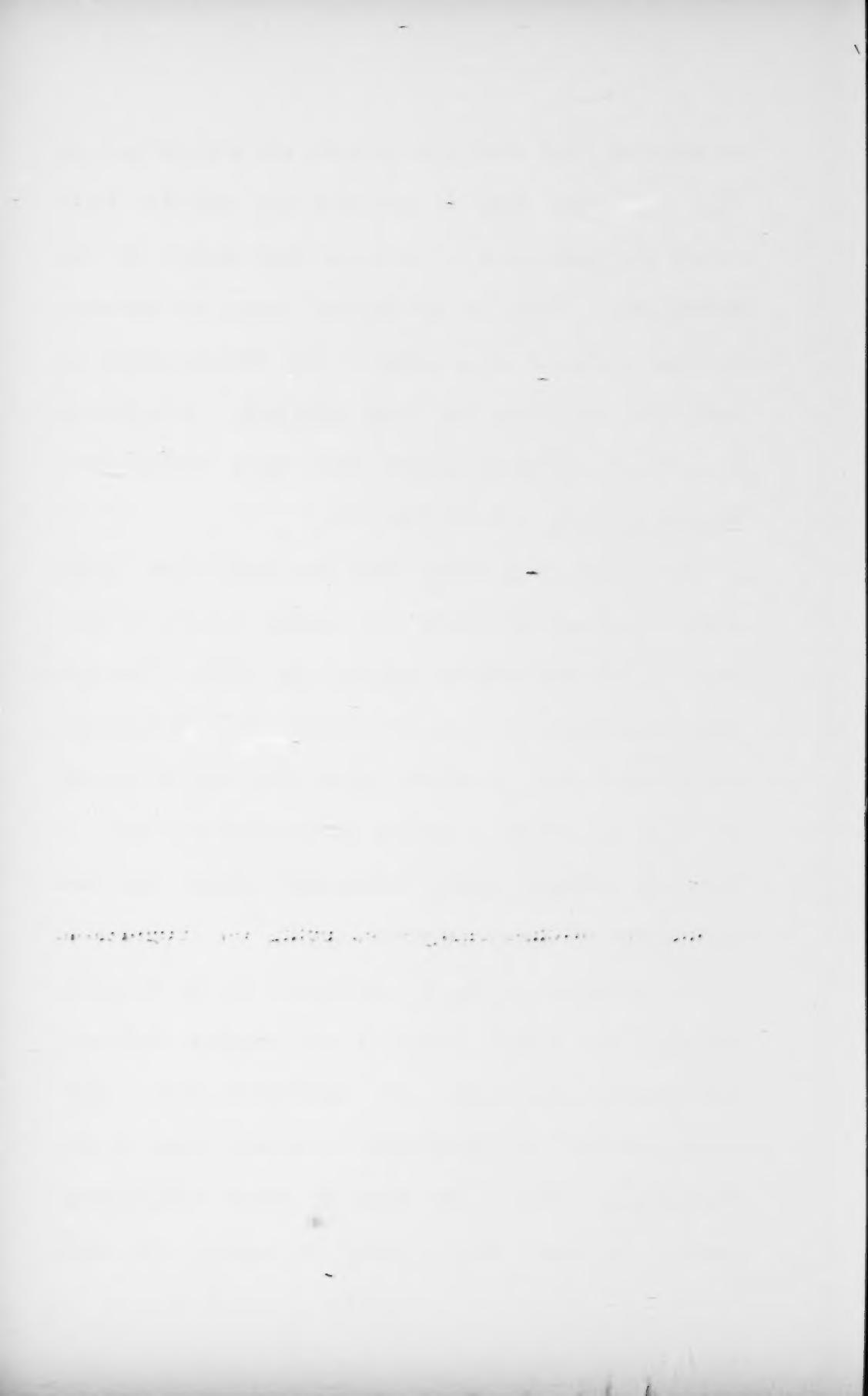
The essential essence of any complaint is that sufficient facts be recited from which the conclusion can be drawn that a crime has been



committed, and that the defendants committed it. The indictment fails to advance any specific facts which are indicative of criminal misconduct by the defendants. There is no injured party, no accuser, and no evidence of a crime. The defectiveness is such that no crime has been charged. Allegations of criminal charges cannot rest upon ambiguities. Russell v. U. S. 8 L.Ed 240, 254.

The Court also stated that the indictment "must state the question which was under inquiry at the time of the defendant's default, (p. 755). The obvious consequence, as the Court has repeatedly emphasized, was to confer upon the federal courts the duty to accord a person prosecuted for this statutory offense every safeguard which the law accords in all other criminal cases.

In Watkins v. U. S. (referred to in Russell, above), "the Court found it not merely difficult, but actually impossible, to determine what the topic under subcommittee inquiry had been. (Russell, p. 764). The vice of these indictments, rather, is that they failed to satisfy the first



essential criterion by which the sufficiency of an indictment is to be tested, i.e., that they failed to sufficiently apprise the defendant 'of what he must be prepared to meet.' It is an elementary principle of criminal pleading, that where the definition of an offense, whether it be at common law or by statute, 'includes generic terms, it is not sufficient that the indictment shall charge the offense in the same generic terms as in the definition; but it must state the species, - - it must descend to particulars.' U. S. v. Cruikshank, 92 U.S. 542, 558.

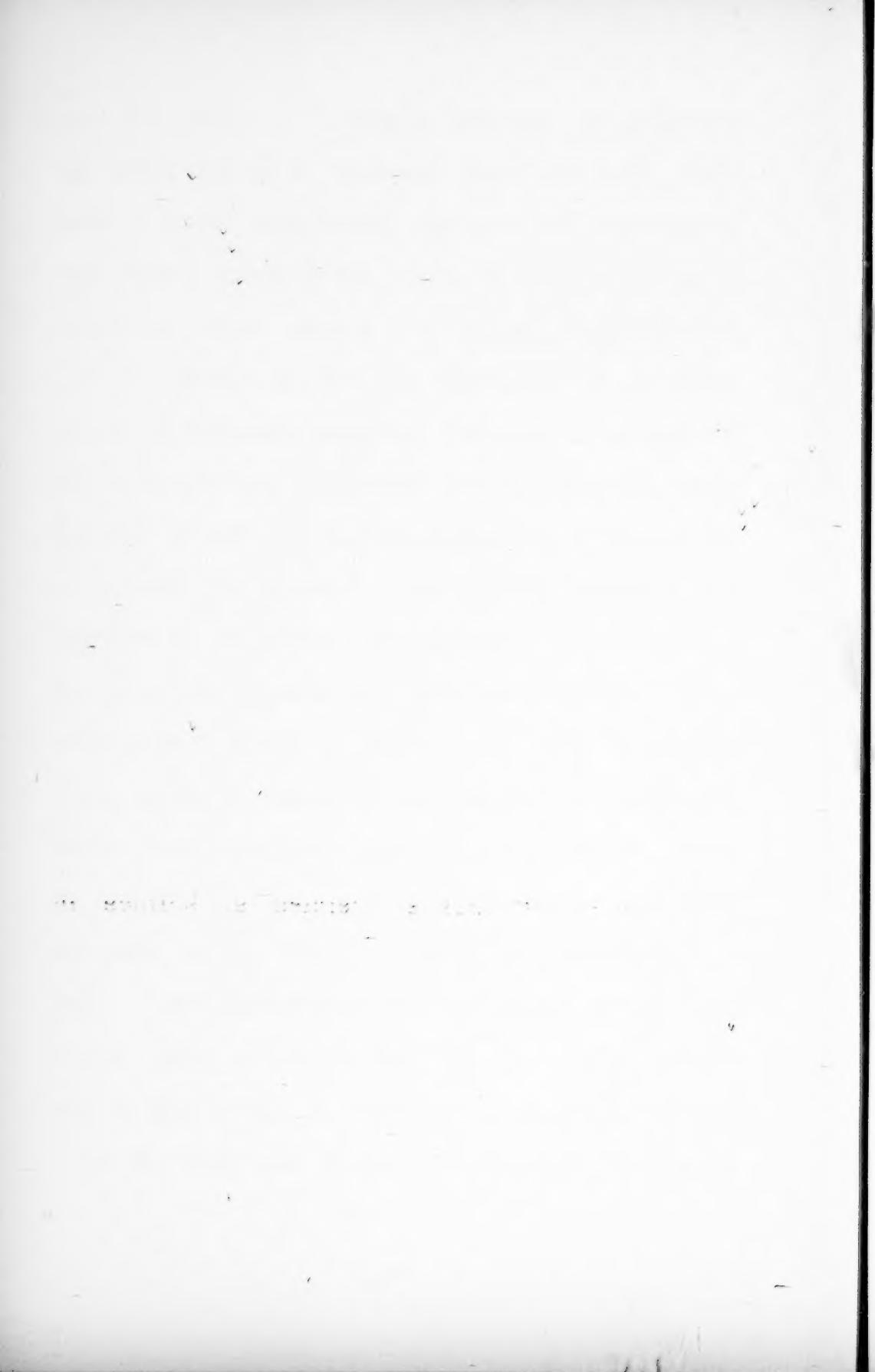
Section 7203 USC 26 is a Civil Statute, while the Government claims jurisdiction under Section 3231, USC 18, a Criminal Statute which fails to define the offense charged as being one cognizable in the District Courts of the United States.

Congress has provided for civil jurisdiction as follows: "Internal Revenue; customs duties. The district court shall have original jurisdiction of any civil action arising under any Act of Congress



providing for internal revenue, . . ." USC 28 Sec. 1340. But the word "criminal" is absent from this declaration for original jurisdiction grant. And Congress has never given the Federal Courts any jurisdictional grant of power over criminal sanctions of violations of internal revenue codes. Furthermore internal revenue violations have never been designated "criminal" and therefore do not appear in the Criminal Code of USC 18 (Crimes and Criminal Procedure). Because of this, it is jurisdictionally improper for this court to proceed in a Criminal Indictment that alleges violations of internal revenue laws, which are Civil Codes. The procedure of supporting Criminal charges with civil statutes denies due process and equal protection under the law.

The Section of Title 18 USC 3231, that the government claims confers jurisdiction reads: "The district courts of the United States shall have original jurisdiction, exclusive of the courts of the States, of all offenses against the laws of the



United States." This section used to read: "The crimes and offenses defined in this title shall be cognizable in the District Courts of the United States, as prescribed in Section 41 of Title 28." (1940 code). 18 USC 546 was revised in 1947, and became the present Section 3231. The intent of the Congressional Revision Committee was, stated as follows:

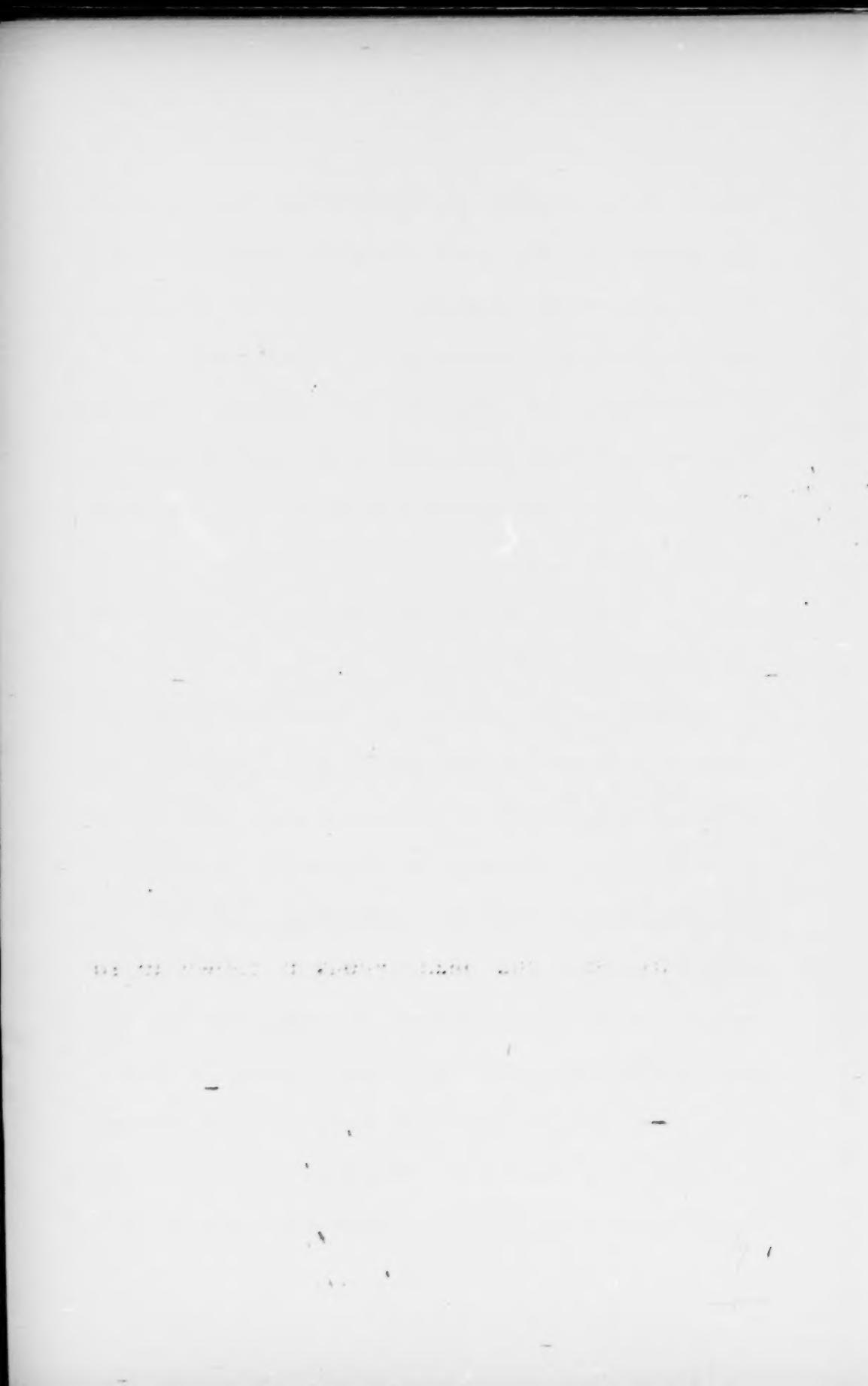
"This section (3231) was formed by combining sections 546 and 547 of Title 18, USC 1949 ed., with section 558d of Title 12, USC Banks and Banking, with no change of substance." H.R. Report #304 (1948). It is well established that the powers of the government are enumerated powers, and since the alleged "crimes" subject of this action were not enumerated or defined in Title 18 prior to its revision, and they are not enumerated or defined in the revised version of Title 18, and that the intent of the revisors was to make no change of substance, the District Court lacks cognizable jurisdiction to hear the instant



case. It is evident the government has assumed the power to try civil statutes under criminal prosecution, with whatever (?) rules of procedure, and therefore this challenge to jurisdiction.

Defendants are indicted for alleged criminal offenses in 1982, 1983, and 1984, and it appears the statute of limitations has been extended from one to three years, as it was formerly, to five years. It still appears the statute of limitations has run in this case for 1982.

Defendants are unable to ascertain what the court deems to be the nature and cause of the action, whether civil or criminal, with what Rules of Procedure; whether misdemeanor or felony, and especially what an acceptable "income tax return" consists of in our case. Defendants recently learned the Internal Revenue Service has been collecting taxes from them under a Treaty with Great Britain, assuming they are non-citizens, so according to that information Defendants should have been filing Resident-alien returns in



order to satisfy the Internal Revenue requirements. Even so, if failure to file "an income tax return" under 7203 USC 26 is a criminal offense, under assumed jurisdiction of Title 18, Section 3231, the statute of limitations has run.

5) Ambiguity leading to Double Jeopardy. The indictment must not be ambiguous so that a defendant could prepare a defense for one offense, rather than two or several offenses (double or triple jeopardy). "Ambiguity" is "duplicity, indistinctness, or uncertainty of meaning . . . [or where] some extrinsic fact or extraneous evidence creates a necessity for interpretation or a choice among two or more possible meanings, as where a description apparently plain and unambiguous is shown to fit different pieces of property." (Black's 5th, page 73).

We live in uncertainty and under the necessity for constant interpretation of choices, never knowing if we have fulfilled any requirements of



the Internal Revenue Service for any particular year with any forms or returns, or any bases for defense against whatever alleged offenses. Defendants are attempting to defend against both criminal and civil charges, both misdemeanor and felony, and against any number of returns or forms required for either citizen or alien they allegedly failed to file.

6) Failure of indictment to inform what is required to avoid criminal prosecution for a civil statute, and the taking of property without due process violates fundamental rights of the defendants under the Charter of the Organization of American States. See 2 UST 2394, Chapter II, Article 5 prohibiting violation of fundamental rights.



CONCLUSION

Appellants/Defendants conclude the Indictment is insufficient to provide the nature and cause of the action, as failing to allege Defendants were liable for any tax, and no assessment was made, or were persons specifically required to file, and failed to provide a standard for a valid or acceptable return, either as citizen or alien, or furnish the name of the form or forms and information required in order to comply with the regulations, or prevent having to defend against double jeopardy.

The Indictment failed to show the level or degree of offense, and Defendants cannot be expected to know how to plead, or how to make a defense against an unknown offense.



RIGHTS UNDER TREATY FOR AMERICAN STATES

Jurisdiction over treaties is placed exclusively in the Courts of the United States, by the U. S. Constitution, Article III, Section 2, also see 28 USC 1331. Therefore, the issues regarding treaties is brought for the first time on appeal to this Court.

This treaty confers fundamental rights, which are the Supreme Law of the Land..

Each state has the right to develop its cultural, political and economic life free and naturally. In this free development, the State shall respect the rights of the individual and the principles of universal morality. OAS Treaty, Chapter III, Article 13.

Treaties are to be construed liberally where rights are concerned, and in no sense are to be allowed a restrictive interpretation.

Treaties are to be construed in a broad and liberal spirit, and, when two constructions are possible, one restrictive of rights that may be claimed under it and the other favorable to them, the latter is to be preferred. Asakura v. Seattle, 68 L.Ed 1041.

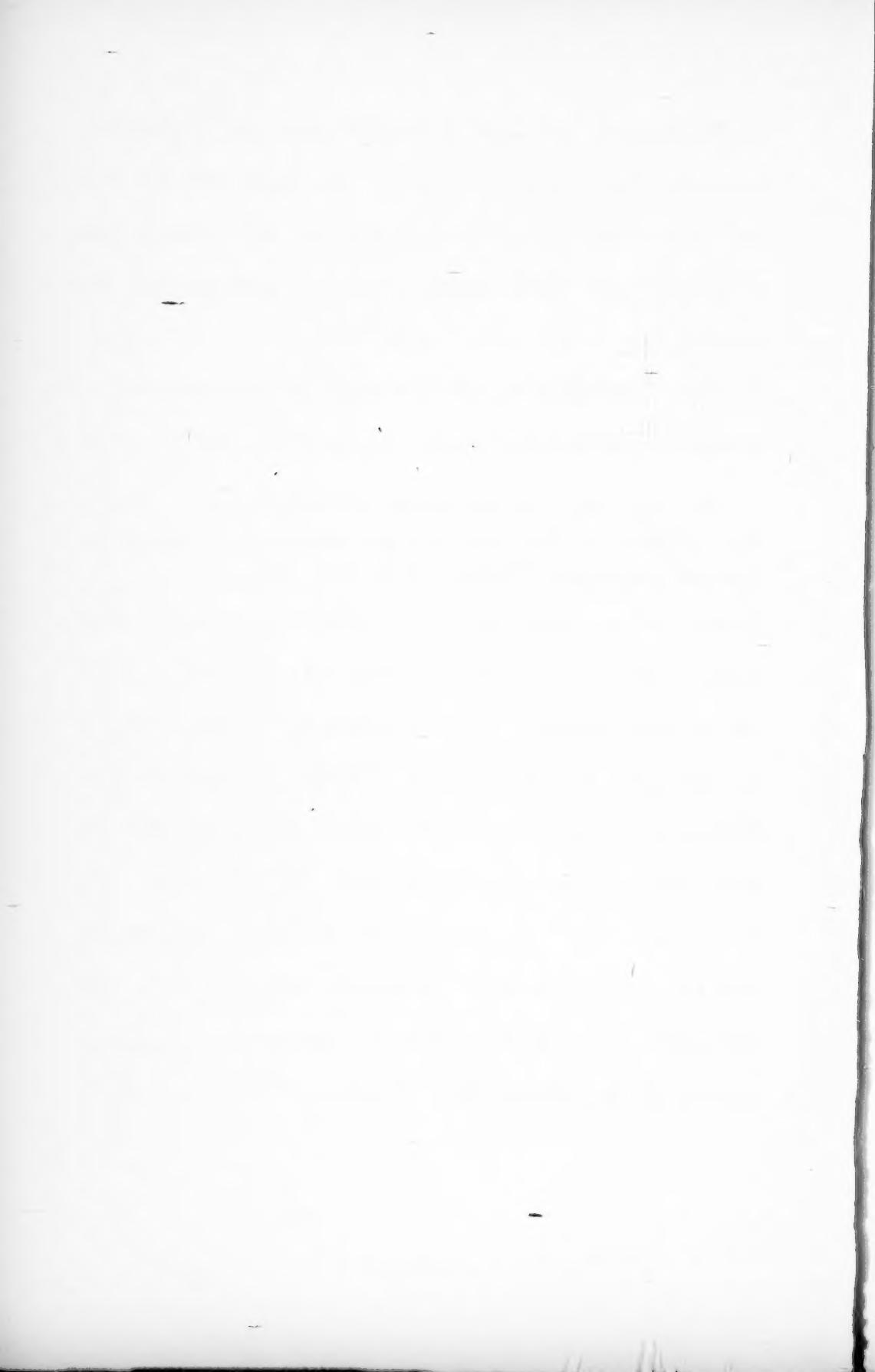


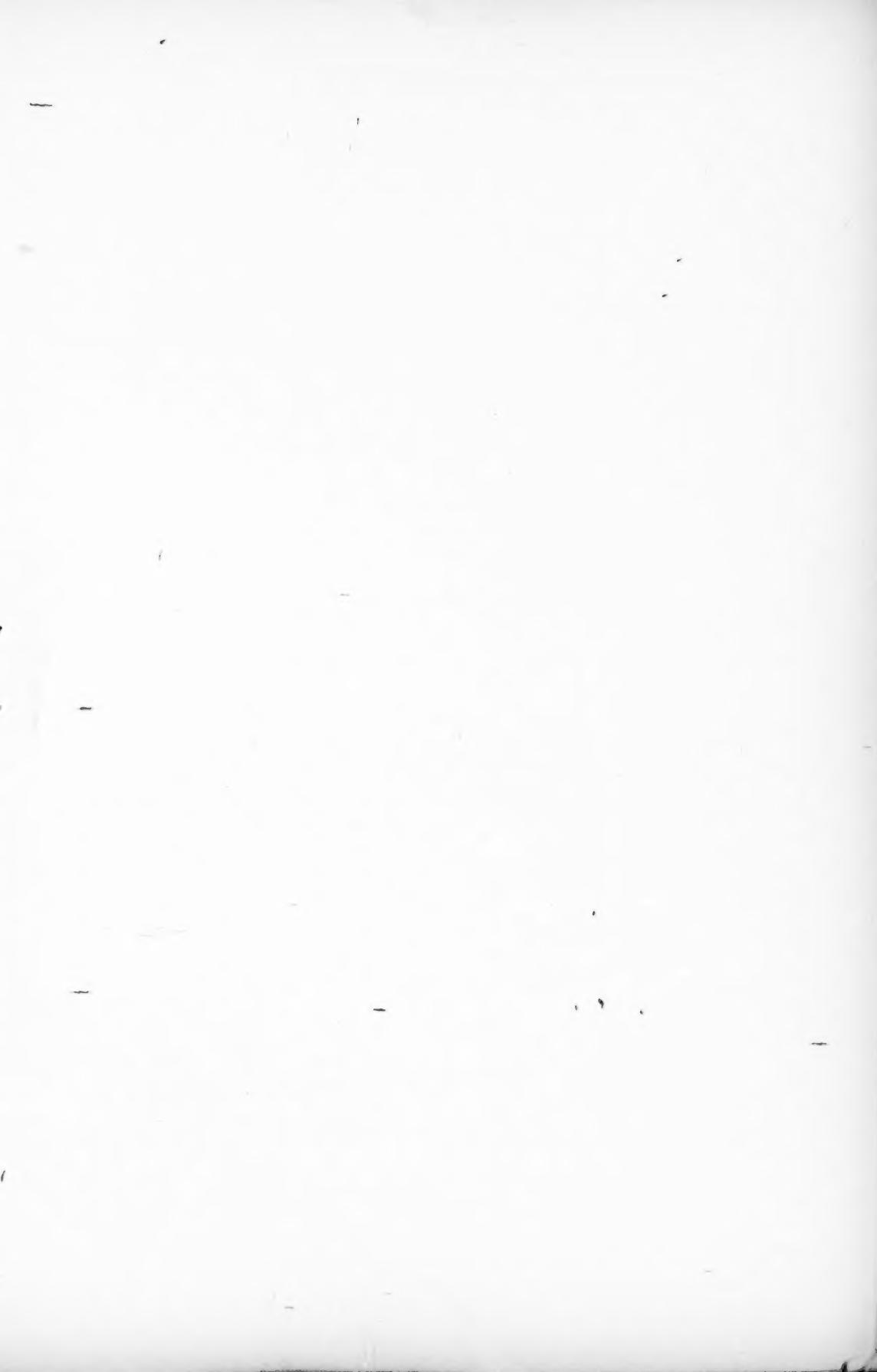
A review of the Constitutions of signatory countries will serve to clarify that due process notice and hearing were intended to fall within the meaning of "individual rights" guaranteed by treaty.

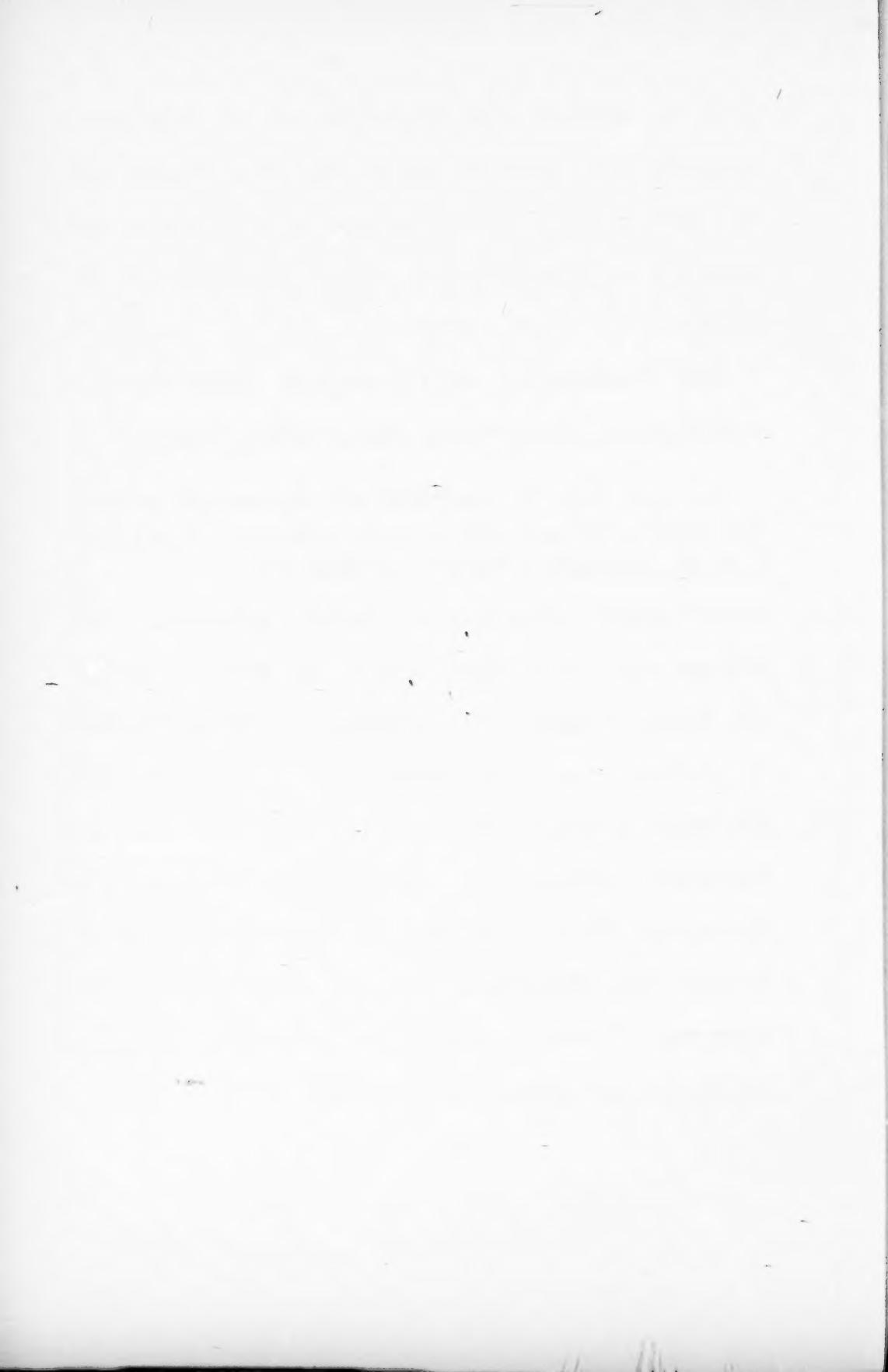
The Constitution of Uruguay is illustrative of constitutions enumerating due process rights.

No one may be punished or imprisoned without due process of law and a legal sentence. Constitution of Uruguay, Chapter I Article 12.

Some other constitutions which guarantee due process are: Argentine, Article 18; Bolivia, Article 16; Brazil, Chapter IV, Paragraph 15; Chile Chapter 3, Article 13; Columbia, Title 3, Article 27; Ecuador, Chapter II, Articles 18 and 28; El Salvador, Chapter II, Article 28, Section 17; Guatemala, Title II, Article 53; Guyana, Chapter II, Article 10; Honduras, Chapter III, Article 70; Paraguay, Chapter 5, Article 6. Reference: Constitutions of the Americas, Peaslee.







took Dixie's school-teacher's salary and Roy's retirement and half of our \$56.00 savings account, under a "Notice of Lien" without ever issuing a lien, or an assessment, we began studying the law and the IRS Regulations. The IRS violated the law several times in our case.

As it is administered, at least in our case, Section 7203 (1954 Code) violates due process rights by not informing accurately the "person" (juristic, or corporate) "required" (an assessment has been made) to "file an income tax return" (what form of return).

Claiming jurisdiction under USC Title 18, 3231, a Criminal statute, when there are no crimes for "income tax" enumerated, and according to the historical note, no "income tax" laws were enumerated in the laws Section 3231 was recodified under (with no change of meaning), and there are stated five year statutory limitations for all "crimes" under Section 3231, as stated elsewhere in this brief the statute of limitations has run for the tax year 1982, at least, in the subject case.



PETITIONERS' PRAYER FOR RELIEF

WHEREFORE, the petitioners pray this Court finds: that Petitioners were not given due process in that the nature and cause of the charges were not defined, nor specified, and therefore no jurisdiction inured to the Court, that fundamental rights of the private individual under the OAS treaty are violated when private property is taken under criminal prosecution for alleged civil statute violations, that the U. S. District Court does not have criminal jurisdiction from Congress under Title 18 Section 3231 for Civil Statutes, USC 26, Section 7203 and the statute of limitations has run, and that the charges should be dismissed against the petitioners, and such other relief as this Court may deem just and proper.

Respectfully submitted,

Signature Roy S Powell
Signature Dixie Lee Powell



UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

UNITED STATES OF AMERICA,)
Plaintiff,) CR 89-085-TUC
-vs-) ACM
ROY G. POWELL and)
DIXIE LEE POWELL,)
Defendants.)
)

MOTION TO DISMISS FOR FAILURE TO STATE A
CAUSE OF ACTION

COMES NOW the defendants and respectfully gives this Court Notice that the complaint in the above cited case fails to state a Cause of Action. The complaint fails to specify with particularity which return or returns it is alleged was not or were not filed, out of some 241 returns required to be filed by the Internal Revenue Service of "persons who are required," or "who are made liable," or "taxpayers subject to" the Code and/or the I.R.S. Regulations. It is a Sixth Amendment violation to fail to inform one of the Nature and Cause of the Failure to File charges.



"A crime is made up of acts and intent, and these must be set forth in the indictment, with reasonable particularity of time, place, and circumstance." U.S. v. Cruikshank 23 L Ed 593.

Without a clear and accurate allegation of the specific return or returns not filed, no intent or omission has been alleged. Without specificity, there is a failure to state a Cause of Action.

Further, this defect of specificity is a violation of Due Process Fair and Adequate Notice.

"No principle of procedural due process is more clearly established than that Notice of the specific charge (is) among the Constitutional rights of every accused in a criminal proceeding in all courts, state or federal." Cole v. Arkansas, 92 L Ed 644, 333 U.S. 201.

The essential essence of any complaint is that sufficient facts be recited from which the conclusion can be drawn that a crime has been committed, and that the defendants committed it. The indictment fails to advance any specific facts which are indicative of criminal misconduct by the defendants. The defectiveness is such that no crime has been charged. Allegations of criminal charges cannot rest upon ambiguities. Russell v. U. S., 8 L Ed 240, 254.



Further, the failure to inform with required specificity, and taking of property without due process violates the Charter of the Organization of American States, 2 UST 2394, Chapter II, Article 5 prohibiting violation of fundamental rights.

For the reasons stated above the defendants respectfully request that the charges be dismissed with prejudice.

Excludable delay under 18 USC Section 3161(h) will occur as a result of this motion or of an order based thereon.

Signature /s/ Roy G. Powell,
Defendant
/s/ Dixie Lee Powell
Defendant

A copy of the foregoing mailed to:
REESE V. BOSTWICK
Assistant U. S. Attorney
Acapulco Building, Suite 310
110 South Church Street, Certified P 920 351 195
Tucson, Arizona 3/28/89
JANET FREEMAN Certified P 920 351 194
U. S. Department of Justice 3/28/89
Tax Division, Criminal Section
P. O. Box 972,
Washington, D. C. 20044
Original and copy hand delivered to Clerk of the U. S. District Court on 3/28/89.



JUDGMENT

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Filed Aug 21 1989

UNITED STATES OF AMERICA)

Plaintiff-Appellee) No. 89-10202

- vs -) 89-10203

ROY G. POWELL,) DC CR-89-0085

DIXIE LEE POWELL,) ACM

Defendants-Appellants.)

APPEAL from the United States District Court for
the District of Arizona (Tucson)

ON CONSIDERATION WHEREOF, It is now here
ordered and adjudged by this Court, that the
Appeals in this Cause be, and hereby is dismissed.

Filed and entered June 05, 1989

A True Copy Attest Aug 17 1989 Cathy A.
Catterson, Clerk of Court by Oscar Gayle, Deputy.



UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Filed Aug 9 1989 Cathy A. Catterson, Clerk, U.S. Ct.
UNITED STATES OF AMERICA,) No. 89-10202
Plaintiff-Appellee,) DC# CR 89-85-
- v s -) ACM
ROY G. POWELL,) Arizona(Tucson)
Defendant-Appellant.)

UNITED STATES OF AMERICA) NO. 89-10203
Plaintiff-Appellee,) DC# CR 89-85
- v s -) ACM
DIXIE LEE POWELL,) Arizona(Tucson)
Defendant-Appellant.) ORDER

Before: BROWNING, THOMPSON and LEAVY, Circuit
Judges

Appellants' motion for rehearing and
suggestion for rehearing en banc, filed in appeal
No. 89-10203 is ordered filed also in appeal No.
89-10202.

Appellants' motions for rehearing are denied
and the suggestions for rehearing en banc are re-
jected.